

**From:** JonKai@aol.com@inetgw  
**To:** Microsoft ATR  
**Date:** 11/20/01 2:00pm  
**Subject:** to: U.S. District Judge Colleen Kollar-Kotelly...

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

Dear Judge:

Thank you for this opportunity for the public to give comments on the MSFT settlement... I am about as public as they come, I have no connection to MSFT or the DOJ or the States, or any Computer or software companies..... I am an Architect in Boulder, CO. I have bought software from many different companies, including MSFT. My words are True.... and direct... please read this with all due understanding and importance that this issue brings to our form of capitalism. Without a proper solution, our economy will suffer unbelievable harm from the extinction of true innovative companies that no longer exist because of MSFT....

There are four things wrong with this settlement....

1. It does not address the most important one of the 8 injuries found by the appeals court where MSFT was found to have violated the Sherman Anti trust act in 8 separate violations.
2. It does nothing to keep MSFT from doing the same thing to other companies, including RealNetworks, as it did to Netscape.... (which is the cause of the antitrust suit in the first place)
3. The Settlement was brought about because of macro political motivation.
4. Half of your plaintiffs (half the states) do not agree with the settlement...

See bottom conclusion for an easy solution to a proper remedy....

1) The appeals court found that MSFT illegally commingled application software with its OS to use the OS as leverage in gaining a new market....(see violation of antitrust acts, by Appeals court). MSFT's new OS, WindowsXP, still uses this illegal method of commingling code, in direct violation of the Appeals court decision, the settlement does not address this at all..... nor does it address the Tying issue which is related, and the appeals court asked you, the lower court, to consider this tying issue ... the Settlement does not address this even in a cursory way..... This is a grieves error, and what the entire trial was about, without addressing this, you will find yourself back in court with MSFT as a defendant, while they try to justify another complete decimation of another market, like Netscape's market was destroyed earlier....

2) The whole trial was about how MSFT, scared that Netscape's product, would sublate the OS, used its Monopoly to take over a new market..... whether the DOJ or MSFT wants to admit this, this is what it is all about.... Netscape innovated and created the Browser market, and had 80% to 90% of the market, until one day, 7 MSFT execs came into a Netscape Board meeting, and said: paraphrasing "give us a piece of your business, and a board seat, or we will put you out of business".... (this did happen, quoted from a book by Michael Lewis) and sure enough, MSFT did put Netscape out of business, (Netscape's had to be bought out by AOL, after its market share dropped to less than 20%) after MSFT used its OS to tie this new market product too, and then gave this product away for free..... now we will never see another innovation by Netscape because its main source of revenues was taken away from it..... All of this is illegal to do when you have a monopoly that you can leverage..... and this is what the finding of fact and Conclusion of law found, yet the settlement does nothing to address this..... Worse, it is happening again, this time to RealNetworks.... MSFT is doing the exact same thing to RealNetworks, MSFT has illegally commingled and tied its "Media player" application software to its OS, as it did with "internet Explorer", and now RealNetworks will suffer the same fate as Netscape, and the settlement does nothing to stop this..... RealNetworks actually created the consumer demand and Market for streaming video, now they will lose everything, and we will never see another innovation from RealNetworks again, because they will have to declare Bankruptcy within a year or two or they will be taken over like Netscape was..... mark these words down..... This is a good way to see how really bad this settlement is, when another company is being completely decimated by what the appeals court has already ruled illegal to do, yet the settlement does nothing about.....

3) The DOJ had asked for tougher penalties during different administrations.... and The DOJ had asked for tougher penalties before the start of a War..... nothing has changed between now and then, except the political climate..... however important this war is, it does not give the DOJ carte blanche to completely cave away from the people's needs at home....

The DOJ had asked for tougher penalties even before the appeals Court handed the DOJ a victory in nearly every area, the only exception is the area you are deciding today...the remedies.... a good way to judge this political situation is that the only people you can consider non political, are the 9 judges who have already heard this case.... and ALL of them, including the 7 appeals court justices have decided unanimously that MSFT has broken laws which this settlement does not address.... there is no reason why the DOJ should cave with ineffectual remedies including not even considering the Tying issue and not dealing with commingling....there is no reason except that the macro political climate has changed drastically, including a start of a war..... this should not be a reason for deciding this issue.....

4) you cannot have a settlement, when half of the people involved (half of the states) are against the settlement.... The states have legitimate concerns, yet The DOJ excluded them from settlement talks so that there would be no interference in this settlement, a settlement that gives all and complete victory to MSFT, which everyone who is neutral agrees that the DOJ has handed them....the DOJ did not act in good faith by excluding the states from something that the States had worked so hard on.....

Conclusions...

The solution or remedy is really quite easy to address, I'm not sure why the states wanted MSFT broken up, and I'm very sure why the DOJ wants to levy such easy remedies on MSFT, but the true solution is easy....

There would be no disruption to the economy with this solution, MSFT would have very little regulation hanging over its head, and the solution is easily implemented.....

All you have to do is have MSFT unbundle and unminge its application software from its OS, so that MSFT has to sell the OS on one CD, and the application software on another CD..(mediaplayer,IE,instantmessaging,MSN..etc)..... with no ties between these two separate marketing efforts..... MSFT does not need to be a separate company to do this..... which means zero cost to the economy, and tiny cost to MSFT, and if a consumer really wanted MSFT's apps, and their OS, they would buy both CD's, and by the time they loaded both CD's, the consumer would have exactly the same product as they would have by buying Windows XP..... A win win for the consumers choosing MSFT, and MSFT themselves.....

This would solve all that is wrong with the settlement....., the settlement does have some good points, like the OEM's must be able to control their own "desktop" meaning they can't be told by MSFT that if the OEM's want the OS, then they have to have these apps on there too.....or that they cannot have other companies app software....

With this solution above other companies can sell their CD's to these OEM's and the OEM's can have both MSFT's apps or CDs and other companies apps or CD's along with MSFT's OS.....

If you want some punitive remedies too, (which MSFT deserves, if you read the findings of fact and conclusions of law, and the appeals decision), you can tell MSFT that they can no longer invest in other companies for a period of five years, and they must divest from other companies that they own less than 50% of..... This would be a punitive remedy, and MSFT would think twice about breaking the law again.....

A very simple solution if you think about it.... And I really hope you think about it, because true innovation, and the fate of real companies with real products are at stake, RealNetworks will cease to exist with this settlement as it is today..... think about it, a company who actually created the

streaming video market put out of business by a company (MSFT) that actually copied RealNetworks' product, and bundled this copy with an existing monopoly and then destroyed RealNetworks' market the one that actually brought the innovation to market in the first place.... a sad state of affairs ... and this settlement, as it is, will do nothing to remedy the situation.....

Thank you,  
jon.